

CS FOR HOUSE BILL NO. 149(FIN) am

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FOURTH LEGISLATURE - SECOND SESSION

BY THE HOUSE FINANCE COMMITTEE

Amended: 4/12/05

Offered: 4/11/05

Sponsor(s): REPRESENTATIVES RAMRAS, Wilson, Lynn, McGuire, Gatto, Kelly, Foster, Holm, Stoltze, Gara, Elkins, Crawford, Meyer, Dahlstrom, Croft

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to controlled substances; relating to the crimes of manslaughter,**
2 **endangering the welfare of a child, and misconduct involving a controlled substance;**
3 **relating to the manufacture of methamphetamine and to the sale, possession, and**
4 **delivery of certain substances and precursors used in the manufacture of**
5 **methamphetamine; relating to listing certain anabolic steroids as controlled substances;**
6 **and providing for an effective date."**

7 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

8 *** Section 1.** AS 11.41.120(a) is amended to read:

9 (a) A person commits the crime of manslaughter if the person

10 (1) intentionally, knowingly, or recklessly causes the death of another
11 person under circumstances not amounting to murder in the first or second degree;

12 [OR]

13 (2) intentionally aids another person to commit suicide;or

(3) knowingly manufactures or delivers a controlled substance in violation of AS 11.71.010 – 11.71.030 or 11.71.040(a)(1) for schedule IVA controlled substances, and a person dies as a direct result of ingestion of the controlled substance; the death is a result that does not require a culpable mental state.

* Sec. 2. AS 11.51.100(c) is amended to read:

(c) In this section,

(1) "building," in addition to its usual meaning, includes any propelled vehicle or structure adapted for overnight accommodation of persons or for carrying on business; when a building consists of separate units, including apartment units, offices, or rented rooms, each unit is considered a part of the same building;

(2) "physically mistreated" means

(A) [(1)] having committed an act punishable under AS 11.41.100 - 11.41.250; or

(B) [(2)] having applied force to a child that, under the circumstances in which it was applied, or considering the age or physical condition of the child, constitutes a gross deviation from the standard of conduct that a reasonable person would observe in the situation because of the substantial and unjustifiable risk of

(i) [(A)] death;

(ii) [(B)] serious or protracted disfigurement;

(iii) [(C)] protracted impairment of health;

(iv) [(D)] loss or impairment of the function of a body member or organ;

(v) [(E)] substantial skin bruising, burning, or other skin injury;

(vi) [(F)] internal bleeding or subdural hematoma;

(vii) [(G)] bone fracture; or

(viii) [(H)] prolonged or extreme pain, swelling, or injury to soft tissue.

1 * **Sec. 3.** AS 11.51.100 is amended by adding new subsections to read:

2 (g) Notwithstanding AS 11.51.130, a person commits the crime of
3 endangering the welfare of a child in the first degree if the person knowingly
4 manufactures or attempts to manufacture methamphetamine in violation of AS 11.71
5 in a building, with reckless disregard that the building is used as a permanent or
6 temporary home or place of lodging for one or more children under 18 years of age.

7 (h) Endangering the welfare of a child in the first degree under (g) of this
8 section is a class C felony.

9 * **Sec. 4.** AS 11.51.130(a) is amended to read:

10 (a) A person commits the crime of contributing to the delinquency of a minor
11 if, being 19 years of age or older or being under 19 years of age and having the
12 disabilities of minority removed for general purposes under AS 09.55.590, the person
13 aids, induces, causes, or encourages a child

14 (1) under 18 years of age to do any act prohibited by state law unless
15 the child's disabilities of minority have been removed for general purposes under
16 AS 09.55.590;

17 (2) under 18 years of age or allows a child under 18 years of age,
18 under circumstances not proscribed under AS 11.51.100(g), to enter or remain in
19 the immediate physical presence of the unlawful manufacture, use, display, or delivery
20 of a controlled substance knowing that the manufacture, use, display, or delivery is
21 occurring, unless the child's disabilities of minority have been removed for general
22 purposes under AS 09.55.590;

23 (3) under 16 years of age to be repeatedly absent from school, without
24 just cause; or

25 (4) under 18 years of age to be absent from the custody of a parent,
26 guardian, or custodian without the permission of the parent, guardian, or custodian or
27 without the knowledge of the parent, guardian, or custodian, unless the child's
28 disabilities of minority have been removed for general purposes under AS 09.55.590
29 or the person has immunity under AS 47.10.350 or 47.10.398(a); it is an affirmative
30 defense to a prosecution under this paragraph that, at the time of the alleged offense,
31 the defendant

(A) reasonably believed that the child was in danger of physical injury or in need of temporary shelter; and

(B) within 12 hours after taking the actions comprising the alleged offense, notified a peace officer, a law enforcement agency, or the Department of Health and Social Services of the name of the child and the child's location.

* **Sec. 5.** AS 11.71.020(a) is amended to read:

(a) Except as authorized in AS 17.30, a person commits the crime of misconduct involving a controlled substance in the second degree if the person

(1) manufactures or delivers any amount of a schedule IA controlled substance or possesses any amount of a schedule IA controlled substance with intent to manufacture or deliver;

(2) manufactures any material, compound, mixture, or preparation that contains

(A) methamphetamine, or its salts, isomers, or salts of isomers;

or

(B) an immediate precursor of methamphetamine, or its salts, isomers, or salts of isomers;

(3) possesses an immediate precursor of methamphetamine, or the salts, isomers, or salts of isomers of the immediate precursor of methamphetamine, with the intent to manufacture any material, compound, mixture, or preparation that contains methamphetamine, or its salts, isomers, or salts of isomers; [OR]

(4) possesses a listed chemical with intent to manufacture any material, compound, mixture, or preparation that contains

(A) methamphetamine, or its salts, isomers, or salts of isomers;

or

(B) an immediate precursor of methamphetamine, or its salts, isomers, or salts of isomer;

(5) possesses methamphetamine in an organic solution with intent to extract from it methamphetamine or its salts, isomers, or salts of isomers; or

(6) under circumstances not proscribed under AS 11.71.010(a)(2),

delivers

(A) an immediate precursor of methamphetamine, or the salts, isomers, or salts of isomers of the immediate precursor of methamphetamine, to another person with reckless disregard that the precursor will be used to manufacture any material, compound, mixture, or preparation that contains methamphetamine, or its salts, isomers, or salts of isomers; or

(B) a listed chemical to another person with reckless disregard that the listed chemical will be used to manufacture any material, compound, mixture, or preparation that contains

(i) methamphetamine, or its salts, isomers, or salts of isomers;

(ii) an immediate precursor of methamphetamine, or its salts, isomers, or salts of isomers; or

(iii) methamphetamine or its salts, isomers, or salts of isomers in an organic solution.

* **Sec. 6.** AS 11.71.020 is amended by adding a new subsection to read:

(d) In a prosecution under (a) of this section, possession of nine grams or more of the listed chemicals ephedrine, pseudoephedrine, phenylpropanolamine, the salts, isomers, or salts of isomers of those chemicals is prima facie evidence that the person intended to use the listed chemicals to manufacture, to aid or abet another person to manufacture, or to deliver to another person who intends to manufacture methamphetamine, its immediate precursors, or the salts, isomers, or salts of isomers of methamphetamine or its immediate precursors. The prima facie evidence described in this subsection does not apply to a person who possesses the listed chemicals ephedrine, pseudoephedrine, phenylpropanolamine, or the salts, isomers, or salts of isomers of those chemicals

(1) and the listed chemical was dispensed to the person under a valid prescription; or

(2) in the ordinary course of a legitimate business, or an employee of a legitimate business, as a

(A) retailer or as a wholesaler;

(B) wholesale drug distributor licensed by the Board of Pharmacy;

(C) manufacturer of drug products licensed by the Board of Pharmacy;

(D) pharmacist licensed by the Board of Pharmacy; or

(E) health care professional licensed by the state.

*** Sec. 7.** AS 11.71.030(a) is amended to read:

(a) Except as authorized in AS 17.30, a person commits the crime of misconduct involving a controlled substance in the third degree if the person

(1) under circumstances not proscribed under AS 11.71.020(a)(2) - (6) [AS 11.71.020(a)(2) - (4)], manufactures or delivers any amount of a schedule IIA or IIIA controlled substance or possesses any amount of a schedule IIA or IIIA controlled substance with intent to manufacture or deliver;

(2) delivers any amount of a schedule IVA, VA, or VIA controlled substance to a person under 19 years of age who is at least three years younger than the person delivering the substance; or

(3) possesses any amount of a schedule IA or IIA controlled substance

(A) with reckless disregard that the possession occurs

(i) on or within 500 feet of school grounds; or

(ii) at or within 500 feet of a recreation or youth center;

or

(B) on a school bus.

*** Sec. 8.** AS 11.71.180 is amended by adding a new subsection to read:

(f) Schedule VA includes, unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following substances, including their salts, esters, isomers, and salts of esters and isomers if those salts, esters, or isomers promote muscle growth, whenever the existence of these salts, esters, and isomers is possible within the specific chemical designation: anabolic steroids. In this subsection, "anabolic steroids" means any drug or hormonal substance that is chemically and pharmacologically related to testosterone

(other than estrogens, progestins, and corticosteroids) and that promotes muscle growth; "anabolic steroids" does not include an anabolic steroid that is expressly intended for administration through implants to cattle or other nonhuman species and that has been approved by the United States Secretary of Health and Human Services for that administration, unless a person prescribes, dispenses, or distributes that type of anabolic steroid for human use; "anabolic steroids" includes the following:

- (1) boldenone;
- (2) chlorotestosterone (4-chlorotestosterone);
- (3) clostebol;
- (4) dehydrochlormethyltestosterone;
- (5) dihydrotestosterone (4-dihydrotestosterone);
- (6) drostanolone;
- (7) ethylestrenol;
- (8) fluoxymesterone;
- (9) formebolone (formebolone);
- (10) mesterolone;
- (11) methandienone;
- (12) methandranone;
- (13) methandriol;
- (14) methandrostenolone;
- (15) methenolone;
- (16) methyltestosterone;
- (17) mibolerone;
- (18) nandrolone;
- (19) norethandrolone;
- (20) oxandrolone;
- (21) oxymesterone;
- (22) oxymetholone;
- (23) stanolone;
- (24) stanozolol;
- (25) testolactone;

(26) testosterone;

(27) trenbolone.

* **Sec. 9.** AS 11.71 is amended by adding a new section to article 2 to read:

Sec. 11.71.210. Purchase or receipt of restricted amounts of certain listed chemicals. (a) A person commits the crime of purchase or receipt of restricted amounts of certain listed chemicals if the person purchases or receives more than nine grams of the following listed chemical, its salts, isomers, or salts of isomers within any 30-day period:

(1) ephedrine under AS 11.71.200(4);

(2) pseudoephedrine under AS 11.71.200(13);

(3) phenylpropanolamine under AS 11.71.200(11).

(b) This section does not apply to a person who lawfully purchases or receives more than nine grams of a listed chemical identified in (a) of this section

(1) that was dispensed to the person under a valid prescription; or

(2) in the ordinary course of a legitimate business, or to an employee of a legitimate business, as a

(A) retailer or as a wholesaler;

(B) wholesale drug distributor licensed by the Board of Pharmacy;

(C) manufacturer of drug products licensed by the Board of Pharmacy;

(D) pharmacist licensed by the Board of Pharmacy; or

(E) a health care professional licensed by the state.

(c) Purchase or receipt of restricted amounts of certain listed chemicals is a class C felony.

* **Sec. 10.** AS 11.71.900(20) is amended to read:

(20) "recreation or youth center" means a building, structure, athletic playing field, or playground

(A) run or created by a municipality or the state to provide athletic, recreational, or leisure activities for minors; or

(B) operated by a public or private agency to provide

1 **shelter, training, or guidance for minors.**

2 * **Sec. 11.** AS 17.30 is amended by adding a new section to article 1 to read:

3 **Sec. 17.30.090. Dispensation of and registration and record requirements**
 4 **for certain listed chemicals.** (a) A wholesaler, manufacturer, or distributor of
 5 products containing ephedrine, pseudoephedrine, or phenylpropanolamine, or their
 6 salts, isomers, or salts of isomers, or iodine or crystal iodine, shall keep complete
 7 records of all transactions involving those products, including the names of all parties
 8 involved in the transaction, the date of the transaction, and the amount of the drug
 9 products involved. The records shall be kept readily retrievable and separate from all
 10 other invoices or records of transactions not involving those products and shall be
 11 maintained for not less than three years and must allow for in-person inspection of the
 12 records by law enforcement officers.

13 (b) A retailer of a product or substance that contains (1) as the sole active
 14 ingredient ephedrine, pseudoephedrine, or phenylpropanolamine, their salts, isomers,
 15 or salts of isomers, or (2) iodine, or crystal iodine may not sell or dispense the product
 16 or substance unless the retailer confirms the identity of the purchaser by valid
 17 government-issued photo identification and the retailer requires the purchaser to sign a
 18 written log completed by the retailer showing the date of the transaction, name of the
 19 purchaser, type of identification and the identification number, and the amount
 20 dispensed. The Department of Public Safety and other law enforcement officers shall
 21 have access to the log. The log and the information entered into the log is
 22 confidential. The retailer may not allow access to the log or release information
 23 contained within the log except to the Department of Public Safety or other law
 24 enforcement officers.

25 (c) A person may not offer to sell a product or substance that contains (1) as
 26 the sole active ingredient ephedrine, pseudoephedrine, or phenylpropanolamine, or
 27 their salts, isomers, or salts of isomers, or (2) iodine, or crystal iodine unless that
 28 product or substance is displayed behind a service counter and not accessible to the
 29 public or is kept in a secured cabinet or storage area that may only be accessed by the
 30 seller.

31 (d) Nothing in this section limits the authority of a person regulated by this

1 section to report to a law enforcement agency or officer suspicious purchases of a
2 chemical, product, or substance.

3 (e) Notwithstanding (a) of this section, if a municipality enacts an ordinance
4 requiring wholesalers, manufacturers, and distributors to report the information
5 maintained under (a) of this section, each wholesaler, manufacturer, and distributor
6 shall regularly report that information to the municipal police department at intervals
7 required in the ordinance.

8 (f) Upon the written request of any law enforcement agency, any wholesaler,
9 manufacturer, distributor, or a retailer shall report electronically or by mail the
10 information collected in (a) or (b) of this section for the subsequent six month period.

11 (g) In this section,

12 (1) "distributor" means a person in the state or another state, other than
13 a manufacturer or wholesaler, who sells, delivers, transfers, or in any manner furnishes
14 a drug product described in (a) of this section to a person who is not the ultimate user
15 or consumer of the product;

16 (2) "manufacturer" means a person in the state who produces,
17 compounds, packages, or in any manner initially prepares for sale or use a drug
18 product described in (a) of this section, or a person in another state if the person causes
19 the products to be compounded in, packaged in, or transported to this state;

20 (3) "readily retrievable" means available for inspection without prior
21 notice at the registration address if that address is in the state; if the registration
22 address is outside the state, "readily retrievable" means records must be furnished
23 within three working days by courier, facsimile, mail, or electronic mail;

24 (4) "wholesaler" means a person in the state or another state, other than
25 a manufacturer, who sells, transfers, or in any manner furnishes a drug product
26 described in (a) of this section to another person in the state for the purpose of the drug
27 product's being resold.

28 (h) A violation of (a), (b), or (c) of this section is a class A misdemeanor,
29 punishable upon conviction only by a fine in an amount not to exceed \$10,000. A
30 wholesaler, manufacturer, or distributor that knowingly fails to report as required by
31 (d) of this section is guilty of a violation. In this subsection, "knowingly" has the

1 meaning given in AS 11.81.900(a).

2 * **Sec. 12.** The uncodified law of the State of Alaska is amended by adding a new section to
3 read:

4 APPLICABILITY. This Act applies to offenses committed on or after the effective
5 date of this Act.

6 * **Sec. 13.** This Act takes effect July 1, 2005.